

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3668 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHANTILAL S. SHAH, SINCE DECEASED THROUGH HIS HEIR & L.R.

Versus

STATE OF GUJARAT

Appearance:

MR. N.V. Anjaria with MR. S.M. Mazgaokar for Petitioners
Mr. B.Y. Mankad instructed by M/S MG DOSHIT & CO
for Respondent No. 1, 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 19/01/99

ORAL JUDGEMENT

By means of this petition, the petitioners have prayed for a direction to the respondents that the petitioner should not be treated as ineligible for payment of double salary during the strike period between 7.6.85 to 17.8.85 and for quashing the notice dated 25.6.86 for the recovery of the amount of

double salary paid during the aforesaid strike period and for restraining the respondents from recovering the amount from the petitioners on the ground of double salary paid to the petitioners for the period from 7.6.85 ,to 31st July, 1985 and to pay the double salary to the petitioners for the aforesaid period.

2. The petitioner no.1 was a member of judicial service of Gujarat State as District and Sessions Judge. He was appointed as officiating Secretary, Legal Department and in January, 1984, the petitioner no.1 was appointed as Secretary, Palekar Commission for the High Court Benches in the State of Gujarat on the payment of salary of Rs.1600/- per month in addition to the pension and other retiral benefits with dearness allowance admissible under Rules. The petitioner no.2 retired on superannuation on 31.5.83 as Deputy Registrar, High Court of Gujarat and was appointed as Assistant Secretary to Palekar Commission for High Court Benches with effect from 1.9.1984 on re-employment basis on the same pay which he was drawing at the time of superannuation less pension etc.

3. The Government employees had resorted to strike in support of their demands for abolition of roster system from 7.6.85. The Government of Gujarat issued Government Resolution dated 6.6.85 providing re-employment on daily wages on the basis of average salary of the scale with dearness allowance in addition to pension and employees who were already in service and had remained present during the strike period, were entitled for double salary.

4. By a Government Resolution dated 6.6.85, it was provided that payment of double salary should be made during the period of strike only to those employees whose respective association/Mandals have given a call for strike and as provided by the the said Resolution and that was clarified by Government Resolution dated 28.6.85 that payment of double salary during strike period would be payable to all categories of Government staff upto and including Deputy Secretaries to Government without restriction that their Association/Mandals would have given call for a strike or not. It was further clarified by the Government resolution dated 21.8.85 that benefit of double salary was made available to the Government employees who were Non-Sachivalaya staff equivalent to Deputy Secretary in Sachivalaya by adding words " all categories of staff drawing pay in the pay scale of maximum of which do not exceed Rs.1800/-." The amount of Rs.1800/- has been extended to Rs.2000/- by the

Government Resolution dated 14.10.85 and the amount of Rs. 2000/- was further extended to Rs.2050/- by Government Resolution dated 15th January, 1986. The salary of the petitioner no.1 was Rs.1600/- and by a Government Resolution dated 30th August, 1983, the pay scale of Deputy Secretary was Rs.1400/- to Rs.1800/-. By a further Government Resolution dated 22.8.85, it was further clarified that the benefit of double payment was made available to loyal employees who remained on duty during the strike period. In pursuance of these Resolutions, the petitioners' were paid double salary for the period from 7.6.85 to 31.7.85. Now, the petitioners have received a Government notice dated 25.6.86 in which it is stated that the Government in Legal Department by letter no., HTC-1085/7348-D dated 21.2.86 has informed that the Government in General Administration Department has not agreed to the payment of double salary to the re-employed Government servants and as double salary has been paid to the petitioners, it should be refunded to the Government by a challan. Hence, the petitioners have filed the present petition.

5. An affidavit-in-reply has been filed by the Under Secretary to Government of Gujarat, Legal Department wherein it has been admitted that the petitioners were appointed respectively as Secretary and Assistant Secretary to Palekar Commission on contract basis and terms and conditions were prescribed to regulate their services. The persons who held the post or posts equivalent to the post were re-employed after their retirement as a stop-gap arrangement by GR dated 6.6.85. The Palekar commission was established in 1983 and the posts of attendant staff were created in 1983. The petitioners were not re-employed pursuant to the Government Resolution dated 6.6.85. The persons who were re-employed pursuant to Government Resolution dated 6.6.85 were also given additional pay in addition to the pension but their re-employment was not according to the usual terms and conditions of re-employment under rule 330 of Bombay Civil Service Rules. The petitioner no. 1 was appointed on contract basis and the petitioner no. 2 was appointed on usual terms and conditions of re-employment. Hence, the Government Resolution dated 6.6.85 was not applicable to the petitioners. As the petitioner no.1 was appointed on contract basis and the petitioner no.2 was appointed on re-employment basis, hence they were not regular Government servants. As such, they were not entitled to the benefit of Government Resolutions dated 21.8.85 or 14.10.85 and 15.1.86. The petitioner no.1 was appointed on contract basis by the Government Resolution dated 11.1.84. The scheme of

payment of double salary was applicable only to those Government servants who were in the first instance entitled to the payment of double salary i.e. regular Government servants or re-employed pursuant to the Government resolution dated 6.6.85 and not to those who were appointed on contract basis or re-employed in terms of Rule 330 of Bombay Civil Service Rules. As such, the petitioners were not entitled for the payment of double salary and therefore, the amount paid to them towards double salary in the months of June, July and August was required to be refunded.

6. Heard the learned counsel for the petitioners and perused the relevant record. I have also heard the learned AGP Mr. B.Y.Mankad. The main contention of the learned counsel for the petitioner is that the Resolution dated 6.6.85 provides for re-employment of employees who have already retired, on daily wages based on the basis of average salary of the scale with dearness allowance in addition to pension, by the Resolution the provisions of double salary was made applicable to the regular employees who had remained present during strike period. In para-7 of the affidavit-in-reply, it is asserted that double payment is required to be made to regular Government servants as well as to re-employed persons pursuant to the Government Resolution dated 6.6.85, but the Government Resolution dated 6.6.85 does not provide the double payment to the re-employed persons as the benefit of double salary payment has been provided to the employees who were re-employed pursuant to GR dated 6.6.85. As such, the petitioners are also entitled for the benefit of that double salary. As that Government resolution does not make any provision for the benefit of payment of double salary to the persons re-employed pursuant to that resolution. At the time of the strike, the petitioners' service may be on the basis of contract or otherwise, but they were serving at the relevant time and other Government Resolutions dated 28.6.85, 21.8.85, 14.10.85, 15.1.86 have extended the benefit to all the employees of all categories of Government staff upto and including Deputy Secretary to Government and the posts of the petitioners fall within the categories of Government staff upto and including Deputy Secretary to Government to which the aforesaid Government Resolutions are applicable.

7. On the contrary, the learned A.G.P. contended that the petitioners are not entitled for the benefit of payment of double salary in view of the fact that the benefit has been extended to regular employees

and Government staff upto the Deputy Secretary to Government and the persons re-employed pursuant to Government resolution dated 6.6.85. Therefore, the amount of double salary, if any, paid to the petitioners is liable to be refunded to the Government and as such the petition is not sustainable in the eye of law.

8. I have given anxious thought to the submissions made on behalf of the parties. From the Government Resolutions at Annexures "B", "C", "D" and "E" it appears that the benefit of payment of double salary was extended to the regular staff of the Government upto and including Deputy Secretaries to Government, irrespective of the fact that they may or may not be the members of the association/Mandal who had given a call for the strike and all the categories of Government staff. It appears that the petitioners were Government employees at the relevant time working in the Government. No doubt, the petitioners were re-employed after their superannuation, but the persons who were re-employed pursuant to the Government resolution dated 6.6.85 have been extended the benefit of double salary, though the benefit of double salary has not been extended to re-employed employees by the said GR dated 6.6.85 the petitioners are also entitled for that benefit and at least the payment which has been already been made to them. The petitioner no.1 has died and his wife Savitaben has already been impleaded as legal heir in his place. This Court has already granted ad-interim relief by an order dated 31.7.86 and that was extended later on till today.

9. In view of the above discussion and the facts and circumstances, the petitioners are entitled for the benefit of payment of double salary at least for the period for which the payment has already been made to them. Accordingly the petition deserves to be allowed.

10. Accordingly, the petition is allowed. The letter dated 25.6.86 of the office of Pay and Accounts Officer, Sachivalaya, Gandhinagar is hereby quashed. Rule is made absolute accordingly with no order as to costs.

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